

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600**

<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6040

PETITION OF PETER AND SHEILA BLAKE

(Hearing held January 5, 2005)

OPINION OF THE BOARD

(Effective date of Opinion, February 12, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-323(b)(1). The petitioners propose the construction of a new single-family dwelling that requires a 1.29 foot variance as it is within 5.71 feet of the side lot line. The required setback is seven (7) feet.

Brian McCarthy, an architect, and Bob Lipovsky of Kingston Construction, appeared with the petitioners at the public hearing.

The subject property is Lot 4, Block 90, B. F. Gilbert's Addition Subdivision, located at 324 Boyd Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone (Tax Account No. 01058027).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of a new single-family dwelling.
2. The petitioners testified that the original house on the property was demolished and rebuilt and could not be renovated because of the deterioration to the house and its foundation. The petitioner testified that the house's newly-constructed foundation and footings passed a Department of Permitting Services' (DPS) inspection. See, Exhibit 8(b) [inspections residential building permit/license 314803]. The petitioner testified that after the foundation and footing inspections, a survey revealed that a corner of the new single-family dwelling would be located in the western side yard setback. See, Exhibit No. 14 [rendered as-built site plan].
3. The petitioners testified that the several, mature trees adjoin their western side yard boundary and that the trees are protected by the Takoma Park City Tree Ordinance. See, Exhibit No. 7(b) and 7(c) [photographs of the site]. The petitioners testified that the Ordinance restricts additional construction activity in the area of the trees because of the potential damage to their root

system. Although the new foundation was hand-dug in order to avoid damage to the existing tree roots, any demolition would require heavy equipment, which the City of Takoma Park arborist has prohibited.

FINDINGS OF THE BOARD

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The original house on the property was demolished and rebuilt because of the severe deterioration of the structure and its foundation. The subject property's northwest boundary adjoins a mature tree line. The City of Takoma Park's Tree Ordinance restricts new construction that would impact mature trees on properties within the city. The mature tree line would be adversely impacted by any additional construction activity in that area and the City of Takoma Park's arborist has indicated that the location of the trees on the adjoining lot precludes construction on portions of the subject property. See, Exhibit No. 3 [summary of testimony].

The Board finds that the application of the City of Takoma Park's tree ordinance to this property constitutes an exceptional circumstance peculiar to the property and that the strict application of the zoning regulations would result in practical difficulties to, and an undue hardship upon the property owners.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance requested for the construction of a new single-family dwelling is de minimus.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the new dwelling will not materially change the view from the neighboring properties and that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of 1.29 feet from the required seven (7) foot side lot line setback for the construction of a new single-family dwelling is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) through 5(c).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Wendell M. Holloway, seconded by Angelo M. Caputo, with Donna L. Barron, Louise L. Mayer and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 12th day of February, 2005.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County

Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.